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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appeal No. : 2008-001302
Applicant : Daniel F. Williams, et al.
Application No. : 09/820,377
Filed : March 27, 2001
Title : APPARATUS, SYSTEMS AND METHODS FOR ONLINE,
MULTI-PARCEL, MULTI-CARRIER, MULTI-SERVICE
ENTERPRISE PARCEL SHIPPING MANAGEMENT
Grp./Div. : 3629
Examiner : Plucinski, Jamisue A.
Docket No. : PSTM0041/MRK

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**APPELLANTS' REQUEST FOR REHEARING UNDER 37 C.F.R. §41.52 AND
STATEMENT/ARGUMENT**

In accordance with 37 C.F.R. §41.52, Appellants hereby respectfully request Rehearing of the Decision by the Board (the "Appeal Decision") issued on May 29, 2009 in the case of the above-identified application regarding the affirmation of the rejection of Claims 7 and 23-26.

It is respectfully submitted that this Request for Rehearing is timely filed because it is being filed in accordance with 37 C.F.R. §41.52(a)(1), prior to the expiration of July 29, 2009, which is the last day of the two month period following the May 29, 2009 date of the Appeal Decision.

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BACKGROUND SUMMARY

The Office Action rejected Claims 7, 10-14 and 23-26 under 35 U.S.C. §103(a) as unpatentable over Gendreau (U.S. Publication No. US 2001/0034608; "Gendreau") in view of Stefik et al., (US Publication No. US 2003/0115144; "Stefik"). Office Action, Topic No. 2, p. 3.

The Appeal Decision reversed the rejection under Section 103(a) of Claim 10, and on the basis of the reversal of the rejection of Claim 10, reversed the rejection of Claims 11-14, which are dependent on Claim 10. Appeal Decision, p. 14, ¶¶1-3.

The Appeal Decision affirmed the rejection under Section 103(a) of Claim 7, and on the basis of the affirmance of the rejection of Claim 7, affirmed the rejection of the Claims that are dependent on Claim 7, namely dependent Claims 23, 24 and 25; the Board also affirmed the rejection of Claim 26. See Appeal Decision, p. 14, ¶¶2-3.

Pursuant to 37 C.F.R. §41.52, the Board is respectfully requested to reconsider the following points regarding the Appeal Decision for the above-identified Appeal.

POINTS ON APPEAL FOR WHICH REHEARING IS RESPECTFULLY REQUESTED

Request for Rehearing Point 1 Regarding the Affirmance of the Rejection of Dependent Claim 26 Under 35 U.S.C. §103(a) over Gendreau, in view of Stefik: Dependent Claim 26 is Ultimately Dependent on Claim 10, For Which the Board Reversed the Rejection

It is respectfully asserted that Claim 26 is dependent on Claim 13, which is dependent on Claim 10, for which the Board reversed the rejection. An informal request to the Board was made by telephone for a correction regarding Claim 26. The date for requesting a rehearing being near expiration, the request for correction regarding Claim 26 is therefore respectfully included in this Request for Rehearing. It is respectfully requested that, on the basis of the reversal of the rejection of independent Claim 10 on which Claim 26 ultimately depends, that the rejection of Claim 26 be reversed.

**Request for Rehearing Point 2 Regarding the Affirmance of the Rejection of
Independent Claim 7 and its Dependent Claims 23, 24, and 25 Under 35 U.S.C.
§103(a) over Gendreau, in View of Stefik: Appellants' Arguments Regarding
Distinctions Between Claim 7 and Stefik Are Based on Claimed Limitations, and
Do Not Argue That a Second User is Designated to Finalize Only a Given Label as
Indicated in the Appeal Decision.**

The Appeal Decision indicated that Appellants were arguing that "because in Stefik, a '...usage right is directly related to the existing digital work to which it is attached ...', Stefik is incongruent with the claimed second user's authorization to copy (Appeal Br. 31)." *Id.* The Appeal Decision further indicated that the argument by Appellant was "not based on limitations appearing in the claims and are not commensurate with the broader scope of claim 7 which merely recites wherein the second user is designated ... as authorized to finalize shipping labels, and not designated to finalize only a given label as argued." *Appeal Decision*, p. 11, ¶4 – p. 12, ¶1.

It is respectfully asserted that the aforementioned findings in the Appeal Decision appeared to lead to a conclusion in the Appeal Decision, which is addressed further below, that "[t]he act of printing data [which resides in the buffer of a printer] onto a shipping label is itself a form of copying ..." and "... that Stefik generally discloses a restriction on who can copy as controlled by usage rights (FF 11) similarly to how Appellants' second user is designated as authorized to finalize shipping labels" *Appeal Decision*, p. 11, ¶4.

For the reasons given below, it is respectfully asserted that the aforementioned finding in the Appeal Decision that the argument by Appellant was "not based on limitations appearing in the claims ..." (*Appeal Decision*, p. 11, ¶4 – p. 12, ¶1), misapprehends Appellants' previous argument and the claimed limitations of Claim 7.

Further, for the reasons given below, it is respectfully asserted that the aforementioned finding in the Appeal Decision that Appellant had previously argued that "... the second user is designated ... to finalize only a given label ..." (*Appeal Decision*, p. 11, ¶4 – p. 12, ¶1), misapprehends Appellants' previous argument and the claimed limitations of Claim 7.

In the Appeal Brief, Appellants previously argued:

Stefik discloses attaching usage *rights* for a pre-existing digital work with the pre-existing digital work (See, e.g., *Stefik*, paragraph 0041 ("... usage rights are

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permanently "attached" to the digital work.")); whereas Claim 7 recites that a "... first user is designated in a memory accessible by the computer system as restricted from finalizing shipping labels" It is respectfully asserted that the recitation by Claim 7 of a restriction from finalizing shipping labels is a designation of a restriction associated with the user for taking a type of action, as compared to a right attached to a particular digital work.

Appeal Brief, p. 37.

In the Appeal Brief, Appellants also previously argued:

As compared to attaching a usage right for a particular existing digital work to the existing digital work as disclosed in Stefik, Claim 7 is directed to indicating for a particular user, whether or not the user is restricted from taking a particular action, namely, "finalizing shipping labels." As compared to attaching a Stefik usage right to a particular pre-existing digital work, such as, for example, a Stefik "...right to make [a copy]..." of the digital work, Claim 7 is directed to "...generat[ing] a printable bar-coded pre-processing traveler label ..." for a user that is "restricted from finalizing shipping labels."

Appeal Brief, p. 31.

It is respectfully asserted, for the reasons given below, that the above-mentioned argument in the Appeal Brief is based on the limitations of Claim 7. In particular, it is respectfully asserted that the above-mentioned argument that "... Claim 7 recites that a '... first user is designated in a memory accessible by the computer system as restricted from finalizing shipping labels ...'" is based on the limitations of Claim 7, because independent Claim 7 claims receiving data (comprising a request to ship a parcel, and "... a set of partial shipment information ...") from a first user who "... is designated in a memory accessible by the computer system as restricted from finalizing shipping labels" Further, it is respectfully asserted that the above-mentioned argument "... that the recitation by Claim 7 of a restriction from finalizing shipping labels is a designation of a restriction associated with the user for taking a type of action, as compared to a right attached to a particular digital work ...," is based on the limitations of Claim 7, because Claim 7 claims a first user who "... is designated in a memory accessible by the computer system as restricted from finalizing shipping labels ...," and further claims receiving an input (comprising the machine-readable code that was generated in response to the request by the first user) from a second user (who "... is designated ... as authorized to finalize shipping labels") for finalizing a shipping label for shipping the parcel. See Claim 7; see also, Appeal Brief, p. 36. Yet further, it is

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respectfully asserted that the above-mentioned argument “... that the recitation by Claim 7 of a restriction from finalizing shipping labels is a designation of a restriction associated with the user for taking a type of action, as compared to a right attached to a particular digital work ...,” is based on the limitations of Claim 7, because Claim 7 further claims *retrieving* the set of partial shipment information from memory according to the machine-readable code, and then *generating* a *shipping label* comprising information from the set of partial shipment information that was input by the first user, and according to input from the second user. See Claim 7; see also, *Appeal Brief*, p. 36.

Further, as compared to the aforementioned finding in the Appeal Decision that Appellant had previously argued that “... the second user is designated ... to finalize only a given label ...” (*Appeal Decision*, p. 11, ¶4 – p. 12, ¶1), it is respectfully asserted that the aforementioned argument by Appellant that “... Claim 7 recites that a ‘... first user is designated in a memory accessible by the computer system as restricted from finalizing shipping labels ...’” and “... that the recitation by Claim 7 of a restriction from finalizing shipping labels is a designation of a restriction associated with the user for taking a type of action, as compared to a right attached to a particular digital work ...,” is an argument that the restriction from, or authorization for, as the case may be, “finalizing shipping labels” as claimed by Claim 7, is a right that is attached to a user, not to a particular digital work as disclosed in *Stefik*. See *Appeal Brief*, p. 36-37; see also, *Appellant's Reply Brief*, p. 10; *Appellant's Reply Brief*, p. 15.

Request for Rehearing Point 3 Regarding the Affirmance of the Rejection of Independent Claim 7 and its Dependent Claims 23, 24, and 25 Under 35 U.S.C. §103(a) over Gendreau, in View of Stefik: Claim 7 Claims Generating a Shipping Label, Not Printing a Shipping Label, and Therefore Does Not Claim Copying, That as Disclosed By Stefik, Could Be Controlled With Usage Rights Attached to a Digital Work.

The Appeal Decision based the affirmance of the rejection of Claim 7, in part, on the conclusion that “[t]he act of printing data [which resides in the buffer of a printer] onto a shipping label is itself a form of copying ...” (*Appeal Decision*, p. 11, ¶4) and “... that Stefik generally discloses a restriction on who can copy as controlled by usage rights (FF 11) similarly to how Appellants' second user is designated as authorized to

finalize shipping labels.” *Id.* The Appeal Decision explained that “[t]he act of printing data onto a shipping label is itself a form of copying, namely, the data which resides in the buffer of a printer is copied onto the label substrate in human-readable form as part of the printing process.” *Id.*

The above-mentioned conclusions explained in the Appeal Decision appear to equate printing data which already resides in a print buffer, with the claimed limitations of Claim 7 for retrieving partial shipment information from a memory according to a code input by a second user and then generating a shipment label according to the retrieved partial shipment information and according to input by the second user. However, for the reasons given further below, it is respectfully asserted that printing data which already resides in a print buffer, is not equivalent to the claimed limitations of Claim 7 for retrieving partial shipment information from a memory according to a code input by a second user and then generating a shipment label according to the retrieved partial shipment information and according to input by the second user.

For the reasons described further below, it is respectfully asserted that Claim 7 does not claim, nor did Appellants previously argue that Claim 7 claims, printing a shipping label. Further, for the reasons described further below, it is respectfully asserted that Claim 7 does not claim, nor did Appellants previously argue that Claim 7 claims, a second user printing data that was input by a first user, and that already resides in a print buffer. Rather than printing a label that already exists in a print buffer, it is respectfully asserted that Claim 7 claims generating a different label, namely a shipping label.

In particular, Independent Claim 7 claims receiving data (comprising a request to ship a parcel, and “... a set of partial shipment information ...”) from a first user (who “... is designated in a memory accessible by the computer system as restricted from finalizing shipping labels”), and generating, saving in memory information regarding, and printing, a traveler label (comprising “a machine-readable code”). See Claim 7; see also, *Appeal Brief*, p. 31; *Appeal Brief*, p. 36.

Claim 7 then claims receiving an input (comprising the machine-readable code that was generated in response to the request by the first user) from a second user (who “... is designated ... as authorized to finalize shipping labels”) for finalizing a shipping label for shipping the parcel. See Claim 7; see also, *Appeal Brief*, p. 36.

After claiming generating and printing a traveler label, it is respectfully submitted that Claim 7 does not then claim printing, or otherwise copying, information already in a print buffer as a shipping label as was apparently concluded in the Appeal Decision's affirmation of the rejection of that Claim. See Claim 7. Rather, as compared to printing, or copying, data that already resides in a print buffer as apparently concluded in the Appeal Decision, after claiming generating and printing a traveler label, it is respectfully submitted that Claim 7 claims retrieving partial shipment information from memory according to a machine-readable code input by a second user, and then further claims *generating a shipping label* comprising the partial shipment information retrieved from memory, and according to input from the second user. See Claim 7; *see also*, Appeal Brief, p. 36; Appellant's Reply Brief, pgs. 9-10; Appellant's Reply Brief, p. 15 (referring to distinctions "given previously above").

It is respectfully asserted that, as was indicated in the Appeal Brief, an exemplary embodiment of the limitations of Claim 7 would "... use[] the retrieved package and shipping information ... to populate the shipping information necessary to rate the shipment and finalize the shipping process and complete a shipping label."). See Appeal Brief, p. 22 ("See, e.g., Specification, paragraph 0448 (Referring to FIG. 55, the Specification explains that "[t]he User enters package and shipping information 335 which is stored in the System databases 336. The User requests printing of a traveler label, which the System prints on a printer local to the User 340. The User delivers the package together with the traveler label to the Shipping Station. The Shipping Station then scans in the Traveler Label 341 in order to retrieve the package and shipping information from the System's databases 342-344 to populate the shipping information necessary to rate the shipment and finalize the shipping process and complete a shipping label 345-351. This application is used, for example, where Desktop Users have no way of weighing each package."); *see also*, e.g., Specification, paragraph 0449 (Referring to FIG. 56 (which depicts an exemplary traveler label), the Specification further explains that "[a]s was described above in relation to 345-351 depicted in FIG. 55, the System uses the retrieved package and shipping information, e.g., 363 and 364, to populate the shipping information necessary to rate the shipment and finalize the shipping process and complete a shipping label.").

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It is respectfully asserted that the claim by Claim 7 for “generat[ing] a shipping label” with information retrieved from a memory, and according to an input from a second user, is not, and is not equivalent to, printing data that already resides in the buffer, or otherwise copying data, as apparently concluded in the Appeal Decision (see *Appeal Decision*, p. 11, ¶4).

Therefore, for the reasons given above, and as previously argued by Appellants, it is respectfully asserted that the claim by Claim 7 for “generat[ing] a shipping label” with information retrieved from a memory, and according to an input from a second user, is distinguished from *Stefik*'s digital right to copy a digital work, and is not, and is not equivalent to, “the act of printing data [which resides in the buffer of a printer] onto a shipping label” (*Appeal Decision*, p. 11, ¶4; see also, *Appeal Decision*, Finding of Fact No. 11 (“Stefik discloses that copying of a work is controlled by usage rights attached to that work.” (*Stefik*, ¶0041]).”), as concluded in the Appeal Decision.

For the above-given reasons, it is respectfully asserted that Claim 7, and therefore its dependent Claims 23-25, are distinguished from *Stefik* and are in condition for allowance.

Request for Rehearing Point 4 Regarding the Affirmance of the Rejection of Independent Claim 7 and its Dependent Claims 23, 24, and 25 Under 35 U.S.C. §103(a) over Gendreau, in View of Stefik: Claim 7 Claims Receiving a Machine-Readable Code, and then Using that Machine-Readable Code to Retrieve Shipment Information, With Which to Rate a Shipment and then Generate a Shipping Label, as Compared to Gendreau That Discloses Inputting Computer-Readable Information to be Directly Used, Along With Parcel Measurements, For Rating a Shipment and Generating a Shipping Label.

In the Appeal Brief, Appellants argued that:

... as compared to the subject matter of Claim 7 wherein the machine readable code is generated and saved by the claimed system, the information in *Gendreau* pre-exists, e.g., was created as the box is manufactured or when an order is packaged in the box (see, e.g., *Gendreau*, paragraph 0032) and must be "input" into the *Gendreau* system.

Appeal Brief, p. 37.

The Appeal Decision disagreed with Appellants' above-mentioned assessment of the disclosure of *Gendreau* and indicated that an embodiment of *Gendreau* is disclosed as an “... invoice which includes a separate printable bar-coded pre-processing traveler

label or invoice 22, which bar-code is machine-readable code that corresponds to the request (FF 7)." *Appeal Decision*, p. 12, ¶3.

It is respectfully asserted that the above-mentioned disagreement by the Appeal Decision misapprehends the above-mentioned argument by Appellants. It is respectfully asserted that the above-mentioned argument by Appellants did not argue that *Gendreau* did not disclose an embodiment where a *Gendreau* invoice (22) could be separate from the item. Rather, the above-mentioned argument asserted that, as compared to being "generated" as claimed by Claim 7, the *Gendreau* invoice "pre-exists" the *Gendreau* system (See *Appeal Brief*, p. 37), and further that the information in *Gendreau*, which, according to *Gendreau*, is shipment information in computer-readable form, must be "input" into the *Gendreau* system. See *Appeal Brief*, p. 37 ("... *Gendreau* discloses that '... an input device 20, such as a bar code scanner, is used to read the computer-readable information relating to at least one of a destination, level of service (e.g., delivery date), and delivery mode of the parcel and to input the computer-readable information into the computer system 18....' *Gendreau*, paragraph [0032].").

In the Appeal Brief, Appellants further argued a distinction between, the limitations of Claim 7 for saving in a computer-accessible memory, a relationship between a machine-readable code and a set of partial shipment information, and the above-explained input of shipping information into the *Gendreau* system. See *Appeal Brief*, p. 37. In the Appeal Brief, Appellants further argued "[t]hat is, as compared to the subject matter of, e.g., Claim 7, wherein a relationship between a machine-readable code and shipment information is saved, *Gendreau* discloses reading the shipment information from an invoice." *Appeal Brief*, p. 37.

The Appeal Decision disagreed with the above-mentioned argument, concluding that "[w]e infer that a computer system which receives the machine readable code and which maintains a relationship between the code and the shipment information would somehow save this information either in a database or in a printer buffer as the label is printed." *Appeal Decision*, p. 12, ¶4 – p.13, ¶1.

It is respectfully asserted, for the following reasons, that the above-mentioned disagreement in the Appeal Decision regarding the claimed relationship between a machine-readable code and shipment information misapprehends the disclosure of *Gendreau*, the limitations of Claim 7, and Appellants' previous argument. It is

respectfully asserted that the distinction between the limitations of Claim 7 and *Gendreau* turns, in part, on the distinction between, on one hand, a machine-readable code in the claimed traveler label that can be used, such as a key, to retrieve (access) shipment information from a memory, and on the other hand, a label as disclosed in *Gendreau*, that has machine-readable shipment information.

It is respectfully asserted that Appellants' previous argument as described above, is in part, in paraphrase, that *Gendreau* discloses reading ["inputting"] computer-readable shipment information from an invoice or other pre-existing label (see *Gendreau*, ¶[0032] (disclosing a label containing "... computer-readable information relating to at least one of a destination, level of service (e.g., delivery date), and delivery mode of the parcel ..." and "... input[ting] the computer-readable information into the computer system 18 ...")); and that *Gendreau* discloses then directly using that shipment information to rate the relevant shipment (see *Gendreau*, ¶[0033] (disclosing that "[a]fter the computer-readable information is inputted into the computer system 18, the box 10 proceeds along the conveying path on the conveyor 12 through a scanning device 24 ...With these parameters inputted into the computer system 18, the computer system 18 searches through the delivery and cost schedules [to rate the shipment] ..." .)).

Further, it is respectfully asserted that Appellants' previous argument as described above, is further, in paraphrase, that the computer-readable shipment information is on the invoice and must be input into the *Gendreau* system, because the shipment information pre-exists, but does not exist within, the *Gendreau* system. Therefore the shipment information is not resident within the *Gendreau* system, prior to its input into the *Gendreau* system.

Yet further, it is respectfully asserted that Appellants' previous argument as described above, is yet further, in paraphrase, that because the shipment information does not, prior to having been input, exist within the *Gendreau* system, there is no relationship saved in a memory in the *Gendreau* system between the computer-readable shipment information and a code that can be used to retrieve the shipment information. That is, contrary to the above-mentioned inference in the Appeal Decision that *Gendreau* maintains a relationship between the a computer-readable code and the *Gendreau* shipment information, it is respectfully asserted that the computer-readable

Gendreau information is itself, shipment information, not a code with which to retrieve shipment information as claimed by Claim 7 (claiming "... retrieve from the memory the set of partial shipment information according to the machine-readable code").

As compared to a label that itself comprises computer-readable shipment information as disclosed in Gendreau, it is respectfully asserted that Claim 7 claims saving in a computer-accessible memory, a relationship between a machine-readable code and a set of partial shipment information, and then claims printing a traveler label that comprises the machine-readable code [as compared to the shipment information]. Claim 7 then claims receiving an input of the machine-readable code [from the traveler label] from a second user (who is designated in the computer-accessible memory as authorized to finalize shipping labels). Claim 7 then claims retrieving from the computer-accessible memory, the set of partial shipment information according to the machine-readable code that was input by the second user. Claim 7 then claims generating a shipping label comprising at least a first item of information from the set of partial shipment information and according to the input from the second user.

Further paraphrasing, Appellants' previous argument is that, as compared to a label that comprises computer-readable shipment information, Claim 7 claims printing a traveler label that comprises a machine-readable code that is used, such as a key, to retrieve (access) shipment information; Claim 7 claims recording a relationship between the machine-readable code and the shipment information prior to a second user's input of the machine-readable code; Claim 7 claims then retrieving the shipment information according to the second user's input of the machine-readable code. See Claim 7.

As compared to reading a computer-readable code from a Gendreau invoice or other Gendreau label, and then using the computer-readable code to access shipment information as claimed by Claim 7, it is respectfully asserted that Gendreau discloses reading the shipment information from a Gendreau invoice or other Gendreau label, and then directly using the inputted shipment information to rate shipment. See also, Appeal Brief, p. 37; cf. also, Gendreau, ¶[0032] (disclosing a label containing "... computer-readable information relating to at least one of a destination, level of service (e.g., delivery date), and delivery mode of the parcel ..." and further disclosing "... input[ting] the computer-readable information into the computer system 18 ..."); Gendreau, ¶[0033] ("After the computer-readable information is inputted into the computer system

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18, the box 10 proceeds along the conveying path on the conveyor 12 through a scanning device 24 ...With these parameters inputted into the computer system 18, the computer system 18 searches through the delivery and cost schedules [to rate the shipment] ...").

It is respectfully asserted that one useful difference over computer-readable shipment information as disclosed in *Gendreau*, would be that an exemplary embodiment of the claimed machine-readable code could remain the same over time so that relevant scanning devices would not need to be changed to read different types of shipping information; whereas the number and types of claimed shipment information stored in the claimed memory in the claimed relationship with the claimed machine-readable code, could be changed over time, and the claimed system that retrieves the shipment information according to the claimed machine-readable code could be correspondingly changed without necessitating any change to relevant scanning equipment; because an exemplary embodiment of the claimed limitations of Claim 7 could employ a plurality of scanning devices, it is respectfully asserted that being able to change a centralized retrieval system would be useful over changing a plurality of scanning devices.

For the above-given reasons, it is respectfully asserted that Claim 7, and therefore its dependent Claims 23-25, are distinguished from *Gendreau* and are in condition for allowance.

REQUEST FOR REHEARING CONCLUSION

Accordingly, for the above-given reasons, and for the reasons and authorities given in the Appeal Brief and in Appellant's Reply Brief, in addition to the reversal of the rejections of Claims 10-14, it is respectfully requested that the rejection of Claim 26

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(which ultimately depends on Claim 10, for which the rejection has been reversed) be reversed; and that the rejections of independent Claim 7, and its dependent Claims 23-25, be reversed.

Respectfully submitted,
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